

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 28, 2006

In Reply Refer To:
Paiute Pipeline Company
Docket No. RP04-51-003

Paiute Pipeline Company
P.O. Box 94197
Las Vegas, NM 89193

Attention: Edward C. McMurtrie
Vice President/General Manager

Reference: See Appendix

Dear Mr. McMurtrie:

1. On May 20, 2005, Paiute Pipeline Company (Paiute) filed revised tariff sheets to comply with the Commission's order issued April 20, 2005 (April 20 Order).¹ The April 20 Order directed Paiute to revise its tariff provisions that relate to reservation charge adjustments and firm capacity rights. Paiute's tariff sheets listed on the Appendix are accepted as being in compliance with our April 20 Order, effective on the dates proposed.

2. Public notice of Paiute's filing was issued on May 25, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2006)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of the order are granted. Sierra Pacific Power Company (Sierra) filed a protest. The protest is discussed below.

3. In the April 20 Order, the Commission directed Paiute to revise its existing section 12.2(c) of Rate Schedule FT-1, which governs reservation charge adjustments in situations involving *force majeure* or non-routine repairs or maintenance. The Commission discussed two specific methods that it has approved as acceptable mechanisms for risk sharing in *force majeure* events. One method involved a partial

¹ *Paiute Pipeline Co.*, 111 FERC ¶ 61,107 (2005).

credit where the pipeline credits its affected shippers with the portion of the transportation rate that covers the pipeline's return on equity and associated income taxes. The second method establishes a limited period of time during which the shippers bear the risk of a shortfall of capacity, and thereafter the pipeline bears the risk. Paiute revised section 12.2(c) to provide for the first method described above, that is an adjustment equivalent to a credit of the portion of Paiute's firm transportation rate that covers Paiute's return on equity and associated income taxes.

4. Sierra argues that section 12.2(b) of Paiute's Rate Schedule FT-1 should be modified so that reservation charge adjustments would also apply if service failure was due to the operating conditions on upstream pipelines not within the control of Paiute. Sierra's protest is rejected as being outside the scope of this compliance filing. In the November 3, 2004 Order in this proceeding,² we accepted Paiute's proposed revision to section 12.2(b) exempting it from providing a reservation charge adjustment when the failure to deliver is due to the *operations of upstream pipelines*.” [emphasis added].³ Sierra did not seek rehearing of that holding. The April 20 Order only required Paiute to propose a method of providing partial reservation charge credits in situations involving *force majeure*, without modifying its earlier holding that no credits need be given when the service failure was due to operating conditions on upstream pipelines. Paiute's revisions comply with our April 20 Order and are accepted, effective June 19, 2005, as proposed.

5. In the cover letter to its March 16, 2004 *pro forma* tariff sheet filing in this proceeding, Paiute included a statement to the effect that a shipper could increase a lateral capacity limitation (LCL) set forth in its firm transportation service agreement, if firm capacity were available on the lateral, by reducing its primary firm rights on a different lateral. The April 20 Order found that adding a tariff provision setting forth a shipper's right to increase its LCL in this manner would be helpful to shippers. Paiute has revised sections 13.2(a) and 13.3 of its General Terms and Conditions stating the right of a shipper to increase its LCL as described in Paiute's March 16, 2004 cover letter. Since these changes are revisions to tariff provisions originally made to be effective in this proceeding on December 9, 2003, Paiute has proposed an effective date of December 9, 2003 for those tariff sheets.

6. Sierra Pacific protests Paiute's revised section 13 on the ground that the LCL limit on shippers' primary capacity rights improperly limits shippers' segmentation rights and is potentially unduly discriminatory. The Commission expressly found in the November 3, 2004 Order in this proceeding that section 13, which reflected the

² *Paiute Pipeline Co.*, 109 FERC ¶ 61,139 at P 33 (2004).

³ *Id.* at P 33.

LCL limitation on a shipper's primary capacity segmentation rights, is consistent with the Commission's segmentation policy which states that segmentation rights do not change contract limits on primary firm capacity.⁴ The Commission finds that Sierra Pacific's assertion that section 13 should be revised due to it being potentially discriminatory is without merit and is rejected. Paiute is prohibited from providing different treatment between shippers in their ability to obtain delivery rights and the tariff does not state that preferential treatment will be provided. Moreover, our holding in the April 20, 2005 Order was limited to directing Paiute to file revised tariff sheets reflecting a shipper's right to increase its LCL as discussed in Paiute's March 16, 2004 cover letter. Paiute's tariff revisions comply with that directive and are accepted, effective December 9, 2003, as proposed.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁴ *Paiute Pipeline Co.*, 109 FERC ¶ 61,139, at P 52 (2004).

Appendix

Paiute Pipeline Company
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FERC Gas Tariff
Second Revised Volume No. 1-A

Tariff Sheets to be Effective December 9, 2003

2ND Sub Second Revised Sheet No. 100
Substitute Original Sheet No. 101A

Tariff Sheets to be Effective June 19, 2005

Third Revised Sheet No. 25A
Third Revised Sheet No. 25B